IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1106 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH @ MUNNO BACHUBHAI KOLI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MS YAMINI J DESAI for Petitioner

MR KT DAVE, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

#. Sub-Divisional Magistrate, Junagadh, passed an order in exercise of powers under section 56(b) of the Bombay Police Act ("the Act" for short), on September 22, 1999, externing the petitioner from the areas of the districts

of Junagadh, Amreli, Porbandar, Rajkot City and Rajkot (Rural) for a period of two years, in order to prevent the petitioner from pursuing his activities which were found to be detrimental to public order by the externing authority to his satisfaction.

#. Prior to passing of the order, a notice under section 59 of the Act was issued upon the petitioner on July 6, 1999, calling upon him to show cause why he should not be externed from the areas of districts of Junagadh, Amreli, Porbandar, Rajkot City & Rajkot (Rural). The notice contained several allegations. The main allegations are that he has formed a gang, harasses people, uses force and intimidation with the help of deadly weapon in the areas of Jawahar Road, Sakkariyo Timbo, Sejna Ota and Dubdi - plot etc. and due to his activities, the offences are registered against him. It is also stated in the notice that the people at large are afraid of him and are not prepared to depose against him in public.

#. Reply to show cause notice was given by the proposed externee and thereafter proceedings of externment were conducted. On conclusion of the proceedings, the externing authority passed the impugned order, externing the petitioner for a period of two years. The said order was carried in appeal before the appellate authority in the government as provided under section 60 of the Act. After hearing both the sides, the appellate authority dismissed the e appeal.

#. The petitioner- externee has approached this Court with this petition, challenging the said orders on various grounds. However, Ms. Yamini Desai, learned advocate appearing for the petitioner has restricted her argument to the ground that the areas of operation indicated in the show cause notice and the areas of operation considered in the order of externment are different. She further submitted that the show cause notice does not indicate the existence of statements of anonymous witnesses nor does it indicate contents of such statements, whereas while passing the order, the externing authority has placed reliance on this material. This has infringed the right of the detenue of making an effective representation as due notice in this regard cannot be said to have been served on him as contemplated under section 59 of the Act. The order of externment, therefore, would be vitiated and the petitio, therefore, may be allowed.

#. Mr. K.T. Dave, learned APP has opposed this petition. He tried to explain the difference in the

areas of operation as indicated in the notice and the order by stating that the areas of of operation stated in the notice refer to incidents in respect of the offence registered against the externee. Under the circumstances, he urged that the petition may be dismissed.

#. Having regard to rival side contentions, it is very clear from a comparative reading of the show cause notice and the order of externment that the areas of operation indicated in the show cause notice and the externment order are totally different. Assuming for a moment that the areas of operation indicated in the show cause notice relate to incidents for which offences are registered, then, the petitioner had no opportunity of knowing the areas of operation referred to in the externment order as copy of FIR or the statements of anonymous witnesses were not served on the proposed externee. He therefore, had no opportunity to know that the externing authority may rely on the incidents alleged to have taken place in the areas stated in the order of externment and therefore, it can be said that the petitioner had no opportunity of representing his case in respect of incidents alleged to have taken place in the areas stated in the order of externment. This is a clear breach of provisions of Section 59 of the Act and therefore, the order of externment based on such material would stand vitiated. The petition therefore, deserves to be allowed on this ground alone.

#. In view of the above discussion, the petition is allowed. The impugned order dated 22nd September, 1999 passed by respondent no.1 and impugned order dated 3rd December, 1999 passed by respondent no.2 are hereby quashed and aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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